DEPARTMENT OF STATE REVENUE

01-20150256.LOF

Letter of Findings: 01-20150256
Indiana Individual Income Tax
For The Tax Year 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. **Residency cases are particularly fact sensitive thus the position relayed within this document pertains only to this case and its specific set of facts.** This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individuals provided enough documentation to establish that they were not Indiana residents for 2012 and therefore not subject to Indiana Income Tax.

ISSUES

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3.1-20-1; IC § 6-8.1-5-1; 45 IAC 3.1-1-21; 45 IAC 3.1-1-22; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayers protest the Department's proposed assessment for the 2012 tax year.

II. Tax Administration - Non-filer Penalty and Interest.

Authority: IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; IC § 6-8.1-10-3; 45 IAC 15-11-2.

Taxpayers protest the imposition of the negligence penalty and interest.

STATEMENT OF FACTS

Taxpayers are a husband ("Husband") and wife ("Wife"). Before meeting his future wife, Husband graduated from a university in Indiana in 2002. Both Husband and Husband's parents were Indiana residents. Shortly after his 2002 graduation, Husband moved to Tennessee to attend graduate school. Husband and Wife married during Husband's matriculation in Tennessee. After obtaining his post-graduate degree, Husband secured employment with a company in Brazil, and moved with Wife to that country.

The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax year 2012 and that Taxpayers failed to file their 2012 Indiana income tax return. The Department, therefore, issued a proposed assessment for 2012 income tax, penalty, and interest.

Taxpayers protested the assessment. An administrative phone hearing was held. This Letter of Findings addresses Taxpayers' protest of the proposed assessment for the 2012 tax year. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayers income tax for the 2012 tax year on the basis that Taxpayers were Indiana residents in 2012 and that they failed to file their 2012 Indiana income tax return. The Department based its assessment on Taxpayers' use of Husband's parents' Indiana address for federal filing purposes, coupled with Husband's possession of an Indiana driver's license issued to him in 2009. Husband obtained that license after his graduation in Tennessee, and after he had moved to Brazil. The Indiana Bureau of Motor Vehicles will not issue an Indiana driver's license unless an applicant asserts legal residence in Indiana, and does not claim residence in another state. Husband's Indiana driver's license would not expire until December 2015.

Taxpayers contend that they were not required to file a 2012 Indiana income tax return because they were not Indiana residents. Taxpayers explained their relocation history, and provided a copy of Husband's Brazil driver's license, the couple's 2012 Federal income tax return, and the couple's Tennessee certificate of marriage. Wife did not have any connections to Indiana prior to Taxpayers' marriage. Taxpayers used Husband's parents' home address, located in Indiana, for certain correspondence and filing obligations.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; taxpayers bear the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, taxpayers are required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate their Indiana income tax after applying certain additions and subtractions to that starting point. Furthermore, IC § 6-3.1-20-1 defines Indiana income as "adjusted gross income of an individual taxpayer, and the individual's spouse, if the individual files a joint adjusted gross income tax return."

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . . ." IC § 6-3-1-12; see also 45 IAC 3.1-1-21. IC § 6-3-1-13 defines a 'nonresident' as "any person who is not a resident of Indiana."

Additionally, 45 IAC 3.1-1-22 states:

> For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur**.
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> **In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**
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> The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:
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> (1) Purchasing or renting residential property
> (2) Registering to vote
> (3) Seeking elective office
> (4) Filing a resident state income tax return or complying with the homestead laws of a state
> (5) Receiving public assistance
> (6) Titling and registering a motor vehicle
> (7) Preparing a new last will and testament which includes the state of domicile.

(**Emphasis added**).

For guidance in determining a taxpayer's domicile, the Department refers to Croop v. Walton, 157 N.E. 275 (Ind. 1927). In Croop a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefit of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. Id. at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. Id. The court found that Mr. Walton: owned and managed a company and stores in Michigan;

maintained his membership with lodges, clubs, and a church; on various occasions exercised his civil and political rights; and that Mr. Walton used Sturgis in his legal documents, including insurance policies, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

> The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." "**If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile**, **provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one**."
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> No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning**.
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> Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."
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> "Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case . . . .
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> Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely**.

Id. at 277-78. (Internal citations omitted)(**Emphasis added**).

In State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court used a similar analysis, determining that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

> Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**
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> **A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.**
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> Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1317-18 (Ind. 1988). (Internal citations omitted)(**Emphasis added**).

During the protest process, Taxpayers submitted additional documentation to support the assertion that they were not Indiana residents and did not owe any Indiana income tax for the 2012 tax year. The documents included Husband's parents' Indiana 2012 property tax assessment, the warranty deed–executed in 2000–in the parents' names, and property tax payment coupons addressed to Husband's parents. Finally, Taxpayers submitted a copy of their Tennessee certificate of marriage, and further demonstrated that they did not stay in Indiana for more than 183 days in 2012. Taxpayers' documents and explanation show a relocation history that began in Tennessee after Husband's 2002 graduation, with Husband obtaining his post-graduate degree, as well as Taxpayers getting married, in that state. Taxpayers subsequently moved to Brazil for Husband's employment.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317-18. Pursuant to 45 IAC 3.1-1-22, Taxpayers have documented relevant facts that establish their new domicile out of state. Therefore, Taxpayers have met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayers' protest is respectfully sustained.

II. Tax Administration - Non-Filer Penalty and Interest.

DISCUSSION

Taxpayers request that the Department abate the penalty and interest. Pursuant to IC § 6-8.1-10-3(a), the Department may assess a penalty if the taxpayer "fails to file a return on or before the due date . . . ."

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. . . . "

Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

> If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Taxpayers established that they will not owe the proposed tax assessment, as discussed in Issue I. The Department sustained Taxpayers on their protest of the imposition of assessed income tax; therefore, that holding makes the issue of penalty and interest assessments moot.

FINDING

Taxpayers' protest of the negligence penalty and interest is sustained.

SUMMARY

For the reasons discussed above, Taxpayers' protest of the Department's proposed assessment for the 2012 tax year is sustained. Taxpayers' protest of the negligence penalty and interest is moot since Taxpayers do not owe any of the proposed assessment.

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